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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/403,192

01/13/2000

JACKI MULLER

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20601 7590 09/02/2009  
SPECKMAN LAW GROUP PLLC  
1201 THIRD AVENUE, SUITE 330  
SEATTLE, WA 98101

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

09/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/403,192	<b>Applicant(s)</b> MULLER ET AL.	
	<b>Examiner</b> ALTON N. PRYOR	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/22/09;2/27/09.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 37 and 60-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37,60-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's arguments, see papers, filed 7/22/09 and 2/27/09, with respect to the rejection(s) of claim(s) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made below. Previous rejections and issues not discussed below are withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37,60-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al (US 5658851; 8/19/97) and Gilmour (US 4185992; 1/29/80).

Murphy teaches novel oil based agricultural adjuvant compositions comprising lipophilically modified silicone, an oil carrier, and a water insoluble pesticide. See column 1 lines 55-67. The silicone/oil composition gives improved spreading properties relative to the carrier oil alone. See column 2 lines 4-14. Murphy teaches that 0.1 to about 2.5% silica fillers such as Tullanox (silicon dioxide) or Aerosil (silica gel) and 1 – 50% nonionic surfactants (auxiliaries) such as tridecyl alcohol ethoxylate can be added to the composition. See column 3 lines 41-54. Murphy also teaches that pesticide such as phenmedipham (biscarbamate) and desmedipham (biscarbamate) can be added to the composition. See column 4 lines 18-29. Murphy teaches does not teach the

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composition comprising 1) silicone/oil component plus Aerosil or Tullanox plus phenmedipham or desmedipham plus tridecyl alcohol ethoxylate specifically; 2) the instant specific area of the silica gel and 5-70% herbicide; 3) a particle size of 0.5-20 micrometer; and 4) ethofumesate or metamitron. However, Gilmour teaches that ethofumesate and metamitron are herbicides (column 22 line 44 - column 23 line 35; specifically lines 10-11,23 and 34-35). It would have been obvious to modify Mruphy's invention to include ethofumesate and/or metamitron taught by Gilmour. One would have been motivated to do this since it would be obvious to try combining compounds having the same utility. In addition, it would have been obvious to one having ordinary skill in the art to add the optional ingredients, Aerosil or Tullanox plus phenmedipham or desmedipham plus tridecyl alcohol ethoxylate, to the silicone/oil component. One would have been motivated to do this in order to enhance the spreading of the actives, phenmedipham and desmedipham, on the plants. It would have been obvious to one having ordinary skill in the art to determine the optimum surface area of the silica gel, and optimum amount of herbicide and the optimum particle size of the actives and auxiliaries. One would have been motivated to do this to assure that the composition would spread effectively on the plant when applied thereto.

### ***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0621. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Alton N. Pryor/  
Primary Examiner, Art Unit 1616